REMARKS

The following addresses the substance of the Office Action.

Enablement

The Examiner has rejected Claims 1-10 and 18-27 under 35 USC §112, first paragraph, as being allegedly non-enabled. Specifically, the Examiner has requested filing an affidavit or declaration by applicants, assignees or a statement by an attorney of record stating that the deposit has been accepted by an International Depository Authority under the provisions of the Budapest Treaty, that all restrictions upon public access to the deposits will be irrevocably removed upon the grant of a patent on this application and that the deposit will be replaced if viable samples cannot be dispensed by the depository. Applicant has amended the Specification to include such statement. Therefore, Claims 1-10 and 18-27 are fully enabled, and their rejection under 35 USC §112, first paragraph should be withdrawn.

Definiteness

The Examiner has rejected Claims 1, 6, 18 and 23 under 35 USC §112, second paragraph, as being indefinite. Specifically, these Claims were rejected for reciting "an antibody which is produced by the hybridomas cell lines CUB1, CUB2, CUB3, and CUB4", while a antibody cannot be produced simultaneously by all four hybridomas. Claim 1 has been amended to no recite "an antibody which is produced by the hybridomas cell lines CUB1, CUB2, CUB3, or CUB4". In view of the amendment to Claim 1, no additional amendments were necessary to overcome the rejection of Claims 6, 18 and 23. In view of the potential rejoinder of non-elected process claims, the withdrawn Claims 11 and 12 were also amended similarly to Claim 1 to now recite the hybridoma cell lines in the alternative. Therefore, in view of the amendments, Claims 1, 6, 18 and 23 are definite, and their rejection under 35 USC §112, second paragraph should be withdrawn.

Novelty

The Examiner has rejected Claims 1-10 and 18-27 under 35 USC §102(b) as being allegedly anticipated by Conze et al. (*Ann. N.Y. Acad. Sci.* 2003 May, 996:222-226). However, this application claims priority to German Application No.: 10242146.3, filed September 2002. Applicant now submits an English translation of the priority document. Therefore, the cited

reference is not prior art of the Claims 1-10 and 18-27, and their rejection under 35 USC §102(b) should be withdrawn.

The Examiner has rejected Claims 1, 6, 18 and 23 under 35 USC §102(a) as being allegedly anticipated by Hooper et al. (*Oncogene*, 2003, Mar 27; 22:1783-1794). However, as discussed above, this application claims priority to German Application No.: 10242146.3, filed September 2002. Applicant now submits an English translation of the priority document. Therefore, the cited reference is not prior art for the Claims 1, 6, 18 and 23, and their rejection under 35 USC §102(b) should be withdrawn.

The Examiner has rejected Claims 1, 6, 18 and 23 under 35 USC §102(b) as being allegedly anticipated by US Patent 6,245,898. Specifically, the cited patent describes mAB 41-2, the same as described by Hooper et al., which binds to CDCP1. The instant Specification describes the antibodies which bind to a cell surface protein designated CDCP1 and which are produced by the hybridomas cell lines CUB1, CUB2, CUB3 and CUB4. Therefore, the Examiner concluded that the claimed antibodies are the same as the mAB 41-2 in the US Patent 6,245,898.

Applicant respectfully disagrees. In the cited patent, the target antigen for the mAB 41-2 is described as being associated with tumor metastasis and being expressed on the surface of metastatic tumor cells. However, the antigen was not fully identified, nor was its full sequence disclosed. The patent merely stated that the antigen has an approximate molecular weight of 180 kDa and that it has an N-terminal sequence, 19 amino acids of which have been disclosed (see col. 8, lines 24-35), with the mAB 41-2 binding to that sequence of 19 amino acids. However, in the later publication of Hooper et al., the antigen which is bound by a monoclonal antibody mAB 41-2 is being identified as 135 kDa protein. Therefore, the two antigens presented in the US patent and the publication are clearly not the same. In addition, when providing the N-terminal sequence of 19 amino acids of a protein that has an alleged molecular weight of 180 kDa, the antigen can hardly be declared as being identified. Furthermore, the 19 amino acid sequence in the US patent differs by at least 2 amino acids from the one disclosed by Scherl-Mostageer et al., publication of which the present specification is referring to (see page 7, lines 22-25). Therefore, the claimed antibodies are not anticipated by the mAB 41-2 of the US patent No. 6,245,898 and

thus, Claims 1, 6, 18 and 23 are novel over the cited reference, and their rejection under 35 USC §102(b) should be withdrawn.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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